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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,715	03/02/2007	Kai Havukainen	BKS.011.WUS	3402

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EXAMINER

JONES, MARCUS D

ART UNIT	PAPER NUMBER
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3714

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/572,715	Applicant(s) HAVUKAINEN, KAI	
	Examiner MARCUS D. JONES	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>IDS (21 March 2006)</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 11 and 12 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. **Claims 1-5, 11-13, 15, 16, 18 and 21 are rejected under 35 U.S.C. 102(e) as being antipated by Hall-Tipping (US 5,001,632).**

In reference to claims 1, 11, and 12, Hall-Tipping discloses: A method for generating game control data for an electronic game dependent from context related data comprising: accessing context data (col 3, ln 35-40), and generating game control data on the basis of said accessed context data (col 4, ln 27-30).

In reference to claim 2, Hall-Tipping discloses: executing a game according to said generated game control data (col 4, ln 41-51).

In reference to claim 3, Hall-Tipping discloses: wherein said accessing context data further comprises processing of context data (col 6, ln 29-33).

In reference to claim 4, Hall-Tipping discloses: wherein said processing of context data is performed in response to actual game data (col 7, ln 9-14).

In reference to claim 5, wherein said context data comprise sensor data (col 3, ln 66 – col 4, ln 2).

In reference to claims 9 and 10, Hall-Tipping discloses: wherein said context data are used to control events in said electronic game and wherein said context data are used to control actions in said electronic game (col 4, ln 27-31).

In reference to claim 13, Hall-Tipping discloses: An analyzer module comprising: an interface connectable to a data source for receiving context data, an interface connectable to a game execution processor, for outputting game control data, and a processing unit for generating said game control data in accordance with said received context data (see Figure 1 and col 5, ln 29-32).

In reference to claim 15, Hall-Tipping discloses: An electronic gaming device comprising: a first processing unit for executing an electronic game, an interface for

connecting to a data source for context data, and wherein said first processing unit is adapted for executing an electronic game according to said received game control data (col 5, ln 29-32) and a second processing unit for generating game control data on the basis of said context data, said second processing unit being connected to said interface for receiving said context data, said second processing unit being connected to said first processing unit for transferring generated game control data to said first processing unit (col 4, ln 38-47).

In reference to claim 16, Hall-Tipping discloses: further comprising a storage for storing of context data or game control data (col 5, ln 16-19).

In reference to claim 18, Hall-Tipping discloses: further comprising at least one sensor connected to said second processing unit (see Figure 1 and col 5, ln 29-32).

In reference to claim 21, Hall-Tipping does not specifically disclose that a limiting device limits execution and control of the game to the received game control data. Hall-Tipping does, however; disclose at least one user operated controller for controlling the operation of the video game (col 3, ln 35-48). Hall-Tipping also further discloses an embodiment in which if the exerciser fails to begin the workout, the player on the screen remains stationary until the user begins moving (col 6, ln 29-33). It is inherent that execution and control of the game is limited to the game control data if the player does not move until the exerciser begins the workout.

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall-Tipping (US 5,001,632).

In reference to claim 8, Hall-Tipping discloses all the elements of this claim. Hall-Tippings further discloses wherein said context data are used to control the timing of the electronic game (col 6, ln 29-33). It would have been obvious to a person having ordinary skill in the art at the time of the invention that if the speed of the game is controlled by the context data that the timing of the game as well would be controlled by the context data.

In reference to claim 17, Hall-Tipping discloses all the elements of this claim. Hall-Tipping does not specifically disclose that the connection between said first and second processing units is a two-way connection. However, it would have been obvious to a person having ordinary skill in the art at the time of the invention to make

the connection between the processing units two-way in order to allow data to be passed between the processing units. By allowing data to pass back and forth between the processing units the playability and efficiency of the game is greatly increased.

6. Claims 6, 7, 14, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall-Tipping as applied to the claims above, and further in view of Wells et al. (US PGPub 2007/0155494).

In reference to claims 6 and 19, Hall-Tipping discloses all the elements of these claims except wherein the context data comprises music data. Wells teaches that the music played during game play controls the events and characters of the video game (pg 3, par 47).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to combine the teachings of Hall-Tipping and Wells to yield the predictable result a video game that is controlled by various external factors such as musical or sensor input.

In reference to claims 7 and 20, Hall-Tipping and Wells teach all the elements of these claims. Wells further teaches the sensing unit observing the user and controlling the video game based on the behavior of the user (pg 13, par 165).

In reference to claim 14, Hall-Tipping discloses all the elements of this claim except said analyzer is incorporated in a synthesizer module. Wells teaches synchronizing system components (pg 20, par 257).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to combine the teachings of Hall-Tipping and Wells to yield the predictable result of an analyzer module that links system components to facilitate game play.

7. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall-Tipping as applied to the claims above, and further in view of Nagata et al. (US PGPub 2002/0016203).

In reference to claims 22 and 23, Hall-Tipping discloses all the elements of these claims except wherein said electronic gaming device is a mobile gaming device and a cellular telephone. Nagata teaches using a portable gaming terminal apparatus in the form of a portable cellular phone (pg 3, par 59).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to combine the teachings of Hall-Tipping and Nagata to yield the predictable result of mobile gaming system that is controlled by an external data source.

The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. See attached USPTO form PTO – 892.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARCUS D. JONES whose telephone number is

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(571)270-3773. The examiner can normally be reached on M-F 9-5 EST, Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Marcus D. Jones/

Examiner, Art Unit 3714

/XUAN M. THAI/

Supervisory Patent Examiner, Art Unit 3714